COURT'S ORDER WHETHER THE CASE IS OR IS NOT APPROVED FOR REPORTING

{**Chapter VIII, Rule 32(2)(b)**}

Description of the Case.

Criminal Appeal No.555 of 2001

(Old Case No.920 of 1992)

Nain Ram S/o Lalu Ram
R/o Village Khuriya Khatta
(Bindu Khatta P.S. Lal Kuwan
District Nainital)
At present R/o village Rekhari Patti,
Malla Danpur, Tahsil Bageshwar
District Almora. .....Appellant

Versus

State of U.P. .....Opposite Party

Sri Manoj Mohan, learned Amicus Curiae for the appellant.
Sri Harish Pujari, learned Addl. G.A. for the State.

Approved for reporting.
~~Not approved for reporting.~~

Dated: 06.11.2007

(Dharam Veer, J.)

COURT NO.7

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Criminal Appeal No.555 of 2001

(Old Case No.920 of 1992)

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Sri Manoj Mohan, learned Amicus curiae for the appellant.
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Dated: 06.11.2007

Hon'ble Dharam Veer, J.

This criminal appeal, preferred under Section 374 (2) of The Code of Criminal Procedure, 1973 (hereinafter referred to as Cr.P.C.) is directed against the judgment and order dated 04.04.1992 passed by IIIrd Additional Sessions Judge, Nainital in Sessions Trial No.70 of 1990, State v. Nain Ram, whereby the learned Session Judge has convicted appellant Nain Ram under Section 304 of The Indian Penal Code, 1860 (hereinafter

Referred to as IPC) and awarded sentence for three years' R.I.

2. In brief, the prosecution case is that daughter of Bhag Ram, namely Ramauti Devi ws married with the appellant-accused about 20 years before, who is resident of village Khuriya Khatta (Bindu Khatta), On 21.01.1989 Ramauti Devi Was beaten by the present accused-appellant because the appellant had a doubt on the character of deceased Smt Ramauti Devi and he was usually beating her. Due to that reason she had gone numbers of times from his house. His grand son Rajendra (son of his daughter Ramauti Devi) had come to his house and informed him that his father (present appellant Nain Ram) had caused injuries to his mother due to that his mother had become unconscious and was lying in his house. After receiving the information, Bhag Ram went to the place of occurrence where he saw that at some distance from the house of the accused appellant her daughter was lying dead. He was also informed that the accused-appellant had caused injuries to his daughter with the reverse side of sickle (Hasiya). With the same averment, Bhag Ram lodged the report in Police Station Lal Kuwan, District Nainital on 22.01.1989 at 16.30 hours, i.e. Ex.Ka-1. On the basis of this report, *Chik* F.I.R. was prepared by Head Moharrir Daya Krishna. The *Chik* F.I.R. is Ex.Ka-2. The entry was made in the G.D., the carbon copy of the G.D. is Ex.Ka-3 Investigation of the case was entrusted to S.I. Udhishthir Singh, who prepared the inquest report on 22.01.1989, the inquest report is Ex.Ka-4 and along with the inquest report phot lash and challan lash were also prepared i.e. Ex.Ka-5 & Ex.Ka-6 respectively. Seal Mohar i.e. Ex.Ka-7

and letter for conduction the post mortem, i.e. Ex.Ka-8 were also prepared. After inquest the body of the deceased was sent for post mortem and the post mortem of the dead body was conducted on 23.01.1989 at 1.00 PM, the copy of the post mortem report is Ex.Ka-11. The Investigation Officer prepared a site plan of the place of occurrence i.e. Ex.Ka-9. During the course of the investigation, the Investigating Officer recorded the statement of the witnesses and after completing the investigation he filed the charge sheet i.e. Ex.Ka-10.

3. Learned Chief Judicial Magistrate, Nainital committed the case to the Court of Session on 19.03.1990 under Section 209 Cr.P.C. after complying the provisions of Section 207 Cr.P.C.

4. Learned Additional Sessions Judge, Nainital framed charges on 25.02.1991 against the present appellant under Section 304 IPC and the charges were read over and explained to the appellant who pleaded not guilty and claimed to be tried.

5. To prove its case the prosecution examined P.W.1 Bhag Ram, who is the complainant and father of the deceased Smt. Ramauti Devi, P.W.2 Rajenda, who is eye witness and son of deceased Smt. Ramauti Devi and appellant Nain Ram, P.W.3 Head Constable Daya Krishna, P.W.4 S.I. Udhisthir Singh (Investigating Officer, P.W.5 Dr. R.S. Dubey, who conducted autopsy of the dead body. After that the statement of the appellant was recorded under Section 313 Cr.P.C., who denied the allegations made against him and in defence he did not produce any oral or documentary evidence.

6. After appreciating the evidence on record and hearing learned counsel for both the parties, learned IIIrd Additional Sessions Judge, Nainital has convicted the appellant under Section 304 IPC and awarded sentence for three years' R.I.

7. Against the said judgment and order, the appellant has preferred the instant appeal.

8. I have heard Sri Manoj Mohan, learned Amicus Curiae for the appellant as well as Sri Harish Pujari, learned Additional Government Advocate for the State and perused the entire record of the trial court.

9. To Prove its case the prosecution has examined P.W.1 Bhag Ram, who has stated in his statement that deceased Smt. Ramauti Devi was his daughter and she was married to the present accused-appellant Nain Ram and from the wedlock of both of them five children were born. The appellant-accused Nain Ram was misbehaving and beating Smt. Ramauti Devi after taking liquor and whenever Smt. Ramauti Devi visited to his house, she used to tell him about the misbehaviour and *Marpeet* committed by the present appellant with her. Appellant-accused Nain Ram had a doubt about the character of deceased Smt. Ramauti Devi. The incident had taken place about two years before. Raju, The son of Smt. Ramauti Devi, came to him and told him that his father Nain Ram had caused injuries her mother had died. After receiving this information he went to see his daughter in her house.

Raju had informed about the said incident next in the daytime. When he reached at the house of Nain Ram, he saw that at some distance from the house of appellant Nain Ram Smt. Ramauti Devi was lying dead, then he lodged the report of the said incident in the police station, that report is Ex.Ka- 1. This witness was cross-examined by the defence counsel but nothing has come out from his statement which may create any doubt in his evidence. The evidence of this witness is reliable and believable.

10. P.W.2 is Rajendra, who is the eyewitness of the said incident and son of deceased Smt. Ramauti Devi and appellant Nain Ram. He has stated that accused-appellant Nain Ram is his father and deceased Smt. Ramauti Devi was his mother. He has further stated that on the date of incident he along with his father Nain Ram, mother Smt. Ramauti Devi, brothers and sisters were living in Khuriya Khatta, P.S. Lal Kuwan. Bhag Ram is his maternal grand father (Nana), who was living at Shantipuri No.4 He has further stated that his mother died abut two years before. Those days his father used to quarrel with his mother. On the date of incident the time was of morning, his father caused injuries to his mother Smt. Ramauti Devi with the blunt side of reverse sickle (Hasiya). His father caused a number of injuries to his mother. After receiving the injuries his mother had become unconscious. He had gone to inform about the said incident to Shantipuri No.4 to his maternal grandfather Bhag Ram (Nana). After returning to his house along his maternal grandfather, he found his mother dead. His maternal grandfather Bhag Ram had lodged the report in the police station and

he had also signed on signed on the said report. This witness was cross-examined by the defence counsel but nothing has come out from his statement which may create any doubt in his evidence. The evidence of this witness is also reliable and believable .

11. P.W.3 is Head Constable Daya Krishna, who has stated that on 22.01.1989 he was posted as Head Mohrrir in Police Station Lal Kuwan. On that day he received a report, i.e.Ex.Ka-1 and on the basis of this report, he prepared the *Chik* report, i.e. Ex.Ka-2 and the entry was also made in the G.D., the copy of the G.D. is Ex.Ka-3.

12. P.W.4 is S.I. Udhisthir Singh, who is the investigating Officer of the case. He has stated that on 22.01.1989 he was posted as Sub Inspector at Police Station Lal Kuwan and the investigation of the case was entrusted to him. During the course of the investigation he prepared the inquest report on 22.01.1989, that inquest report is Ex.Ka-4. He also prepared the photo lash, Challan lash, seal mohar and letter conducting the post mortem, these papers are Ex.Ka-5 to Ex.Ka-8. The dead body was sealed and sent for the post mortem along with Constable Harsaran Singh and Constable Ram Bahadur. On 16.02.1989, he inspected the place of occurrence along with the witnesses and prepared the site plan, i.e. Ex.Ka-9. During the course of the investigation he recorded the statement of the witnesses and after completing the investigation he submitted the charge sheet i.e. Ex.Ka-10.

13. P.W.5 is Dr. R.S. Dubey, who has stated that on 23.01.1989 he posted as Surgeon in Civil Hospital, Haldwani. He conducted the autopsy of Smt. Ramta wife of Nain Ram on the same day. He received the dead body in sealed bundle. Seals were intact and were opened before him. The dead body was brought by CP350 Harsharan Singh and CP540 Ram Bahadur Singh of Police Station Lal Kuwan. The deceased was about 40 years of age and she died about 1-1/2 to 2 days before and he found the following injuries on her body:-

I. Contusion in left upper and forearm including hand. Bones were normal.
II. Contusion in a wide area from right shoulder and arm, the size of contusion was 26 Cm x 6 Cm. Bones were normal.
III. There was contusion of 8 Cm x 5 Cm on the right hand with lacerated wound of 3 Cm x 2 Cm. Third and fourth metacarpal bones were broken.
IV. Contusion of 12 Cm x 10 Cm on right side of the chest and upper side of stomach and there were fractures of 8th, 9th and 10th ribs.
V. Contusion of 5 Cm x 4 Cm on right side of back of the chest.
VI. Contusion of 10 Cm x 6 Cm on left side of limber region.
VII. Abrasion of 2 Cm x 2 Cm on right knee joint.
VIII. Abrasion of 4 Cm x 1 Cm on left leg on shin of Tibia.
IX. Lacerated wound of 2 Cm x .2 Cm X muscle deep
Wound in left sole of foot.
X. Lacerated wound of 2 Cm X .3 Cm muscle deep on right sole.
XI. Contusion of 2 Cm x 1 Cm on the left side of forehead.

14. In the internal examination, the Doctor found the 8th , 9th, and 10th ribs fractured. Right pleural cavity

was full of blood. Right lung was damaged of 1 Cm x 2 Cm in size. Parietorial cavity was also full of blood. Semi digested food was in the stomach. Liver was also damaged towards inside. The death was due to shock and hemorrhage due to the above said injuries on the body. The Doctor has further stated that if injury no.4 is caused by the blunt/reverse side of sickle (Hasiya), the rib can be fractured. Injury no.3 can also be caused in the same manner. He has further stated that injury nos.5, 6, 9, 10 & 11 can also be caused in the same manner with blunt side of reverse sickle and rest of the injuries except injury nos.1 & 2 can be caused by dragging the deceased and injury nos.1 & 2 could possibly be caused by throwing the deceased twice from some height. These injuries could also be caused by pushing down the deceased on a hard surface forcibly. All these injuries could possibly be caused on 21.01.1989 at 10-11.00 AM.

15. After that the statement of appellant was recorded under Section 313 Cr.P.C, who has stated that deceased Ramauti Devi was his wife and his marriage was solemnized 22 years before and Rajendra is his son and for the rest of the questions he denied the allegation made against him but in defence he did not produce any oral or documentary evidence.

16. Sri Manoj Mohan, learned Amicus Curiae for the appellant has submitted that no case is made out against the appellant on the basis of the evidence discussed above while Sri Harish Pujari, learned Additional Government Advocate has refuted the argument advanced by the learned Amicus Curie.

17. From the evidence discussed above, P.W.1 Bhag Ram has stated in his statement that he received the information on 22.01.1989 from his grand son P.W.2-Rajendra that his father Nain Ram had caused injuries to his mother Smt. Ramauti Devi with the blunt side of reverse sickle and due to the injuries caused by his father (appellant Nain Ram) his mother had died and also informed that the said incident had taken place on 21.01.1989 in the morning. After receiving this information, P.W.1 Bhag Ram went to see his daughter in her house. When he reached at the house of her daughter, he saw that at some distance from the house of appellant Nain Ram Smt. Ramauti Devi was lying dead. After that he lodged the report of the said incident in the police station, that report is Ex.Ka-1. The report was lodged on the information given by P.W.2 Rajendra to P.W.1 Bhag Ram, who is a hearsay witness. P.W.2 Rajendra is eyewitness and the son of deceased Smt. Ramauti Devi and the present appellant Nain Ram. He has stated in his statement that his father used to quarrel with his mother and at the time of the incident he was present in his house along with his father Nain Ram, mother Smt. Ramauti Devi brothers and sisters. His father Nain Ram Had caused number of injuries to his mother Smt.Ramauti Devi with the blunt side of reverse sickle and due to those injuries his mother had died. P.W.2 Rajendra is a natural, reliable and trustworthy witness and there is no reason to disbelieve the evidence of Rajendra, who is son of the appellant Nain Ram and deceased Smt. Ramauti Devi and thee is no reason or circumstance to give false statement against his father. The solitary evidence of P.W.2 Rajendra inspires

confidence as this is natural and reliable witness and the evidence of P.W.2 Rajendra is corroborated with the statement of P.W.5 Dr. R.S. Dubey, who has stated that there were 11 external injuries on the body of the deceased Smt.Ramauti Devi and has further stated that if injury no.4 is caused by the blunt/reverse side of sickle (Hasiya), the rib can be fractured. Injury no.3 can also be caused in the same manner. He has further stated that injury nos.5, 6, 9, 10 & 11 can also be caused in the same manner with blunt side of reverse sickle and rest of the injuries except injury nos.1 & 2 can be caused by dragging the deceased and injury nos.1 & 2 could possibly be caused by throwing the deceased twice from some height and these injuries could also be caused by pushing down the deceased on a hard surface forcibly. He has further stated that all these injuries could possibly be caused on 21.01.1989 at 10-11.00 Am. Thus, the evidence of P.W.2 Rajendra is corroborated with the statement of P.W.5 D. R.S. Dubey and there is no reason to disbelieve the evidence of P.W.2 Rajendra.

18. Thus, the prosecution has proved the case against the accused-appellant under Section 304 IPC beyond reasonable doubt.

19. On the basis of the evidence available on record, the judgment and order dated 04.04.1992 passed by the learned IIIrd Additional Sessions Judge, Nainital in Sessions Trial No.70 of 1990 is correct and justified, as per the law. I am in full agreement with the judgment and order passed by the learned Additional Sessions Judge.

20. In view of the above said discussions, the appeal is devoid of merits and is hereby dismissed.

21. Let the record of the case be sent back to the trial court concerned fro compliance of the order.

(Dharam Veer, J.)

06.11.2007
RBS